

PUBLIC PERFORMANCE RIGHT IN SOUND RECORDINGS



110TH CONGRESS
1ST SESSION

H. R. 4789

To provide parity in radio performance rights under title 17, United States Code, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 2007

Mr. BERMAN (for himself, Mr. ISSA, Mr. CONYERS, Mr. SHADEGG, Ms. HARMAN, and Mrs. BLACKBURN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide parity in radio performance rights under title 17, United States Code, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Performance Rights
5 Act”.

6 **SEC. 2. EQUITABLE TREATMENT FOR TERRESTRIAL**
7 **BROADCASTS.**

8 (a) **PERFORMANCE RIGHT APPLICABLE TO RADIO**
9 **TRANSMISSIONS GENERALLY.**—Section 106(6) of title 17,
10 United States Code, is amended to read as follows:

110TH CONGRESS
1ST SESSION

S. 2500

To provide fair compensation to artists for use of their sound recordings.

IN THE SENATE OF THE UNITED STATES

DECEMBER 18, 2007

Mr. LEAHY (for himself, Mr. HATCH, Mrs. FEINSTEIN, and Mr. CORKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide fair compensation to artists for use of their
sound recordings.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

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7 BROADCASTS.

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Public Performance Right in Sound Recordings

- **Both bills were introduced on December 18, 2007.**
- **5 Cosponsors on the House bill: Issa, Conyers, Shadegg, Harman and Blackburn.**
- **3 Cosponsors on the Senate bill: Hatch, Feinstein, Alexander and Corker.**

Public Performance Right in Sound Recordings

Key provisions of the bills:

Expands the Section 114 statutory license to include all public performances of a sound recording by means of an audio transmission.

Establish a flat, annual fee for small broadcasters and noncommercial broadcasters:

a. Small broadcasters grossing less than \$1,250,000 would pay a \$5,000 annual fee.

b. Noncommercial broadcasters would pay a \$1,000 annual fee.

Public Performance Right in Sound Recordings

Key provisions of the bills (cont.'d):

Include exemption for transmission of church services and for an incidental use of a musical sound recording.

Include a per program licensing option for broadcast stations that make limited feature uses of sound recordings.

Public Performance Right in Sound Recordings

Key provisions of the bills (cont.'d):

- Includes a provision stating that nothing in the Act shall adversely affect the public performance rights or royalties to songwriters or copyright owners of musical works.
- The Senate bill includes an additional provision that would remove the regulatory burdens for terrestrial broadcasters, e.g., compliance with the sound recording complement and advance release of scheduled performances.

Public Performance Right in Sound Recordings

On July 31, 2007, the Office testified before the Subcommittee on Courts, the Internet, and Intellectual Property, House Committee on the Judiciary in support of expanding the public performance right in sound recordings for all radio airplay.

<http://www.copyright.gov/docs/regstat073107.html>

Public Performance Right in Sound Recordings

Adoption of an expanded performance right would establish parity among similarly situated parties with respect to users & creators.

Adoption of the expanded performance right would bring the United States in line with most countries that already recognize a performance right in sound recordings.

Public Performance Right in Sound Recordings

**Opponent's reasons for not adopting an
expanded performance right:**

**Maintain radio airplay offers promotional value
that compensates recording artists for use of
their works; and**

**Means to offset regulatory burdens attached to
the FCC licenses, e.g., public interest
obligations.**



DESIGN PROTECTION

Design Protection

- Copyright law provides limited protection for useful articles.
- The design of a “useful article” is protected under copyright law “only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.”

Design Protection

- Title II of Copyright Act of 1976 (Senate version)
- 1978: DMCA added Chapter 13 to Title 17, U.S.C.
 - Vessel Hull Protection Act of 1998
 - “Hull Splashing”
 - Ch. 13: Protection of Original Designs
 - § 1301(a)(1): (1) In general. — The designer or other owner of an original design of a useful article which makes the article attractive or distinctive in appearance to the purchasing or using public may secure the protection provided by this chapter upon complying with and subject to this chapter.
 - (2) A “useful article” is a vessel hull, including a plug or mold, which in normal use has an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article which normally is part of a useful article shall be deemed to be a useful

Design Protection

- ❑ § 1301(a)(2):
 - ❑ Vessel hulls. — The design of a vessel hull, including a plug or mold, is subject to protection under this chapter, notwithstanding section 1302(4).
- ❑ § 1301(b)(4)
 - ❑ (4) A “hull” is the frame or body of a vessel, including the deck of a vessel, exclusive of masts, sails, yards, and rigging.
- ❑ Vessel Hull Design Amendments, S. 1640
 - ❑ (2) VESSEL FEATURES- The design of a vessel hull, deck, or combination of a hull and deck, including a plug or mold, is subject to protection under this chapter, notwithstanding section 1302(4).'

Fashion Design Protection

- ❑ Design Piracy Prohibition Act, S. 1957
- ❑ Design Piracy Prohibition Act, H.R. 2033
- ❑ What would be covered as fashion design?
 - ▣ Fashion design is the appearance as a whole of an article of apparel, including its ornamentation.
 - ▣ Apparel includes an article of clothing, including undergarments, outerwear, gloves, footwear and headgear;
 - ▣ Handbags, purses, and tote bags;
 - ▣ Belts and eyeglass frames.

Design Protection

- Protection would be for 3 years if registered within 3 months of making a design public, i.e., offered for sale or sold to public.
- Infringement arises where alleged infringer had reasonable grounds to know that protection had been claimed for design.
- New provision to insure that existing doctrines of secondary liability apply.
- Clarification that Office would examine only to determine whether application relates to a design which is the subject of protection. No examination for originality.



U.S. House of Representatives Committee on the Judiciary

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Hearing Information

Thursday 02/14/2008 - 2:00 PM
2237 Rayburn House Office Building
**Subcommittee on Courts, the Internet, and
Intellectual Property**
***Hearing on Design Law: Are Special Provisions
Needed to Protect Unique Industries?***
By Direction of the Chairman

Hearing Documentation

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Latest News

**9/27/2007 - Conyers Introduces Internet Tax
Moratorium Extension Legislation**

**8/3/2007 - Conyers, House Democrats Announce
Plans to Hold Hearings on Internet Sex Crimes**

**8/2/2007 - Conyers Announces Plans to Address
Internet Sex Crimes**

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**Hearing on Design Law: Are Special
Provisions Needed to Protect Unique
Industries?**

Witness List

Hon. William D. Delahunt

Member of Congress
Massachusetts, 10th District

William T. Fryer, III

Professor of Law
University of Baltimore School of Law
Baltimore, MD

Narciso Rodriguez

Designer
on behalf of the Council of Fashion Designers of America
New York, NY

Steve Maiman

Proprietor
Stony Apparel
Los Angeles, CA

Carl L. Olsen


President, Ark Design
on behalf of the Alliance of Automobile Manufacturers
Washington, DC

Jack Gillis

Director of Public Affairs
Consumer Federation of America
Washington, DC

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PRIORITIZING RESOURCES AND ORGANIZATION FOR INTELLECTUAL PROPERTY ACT [PRO IP ACT]

PRO IP Act

- H.R. 4279: Prioritizing Resources and Organization for Intellectual Property Act.
- Hearing Thursday 13 December, House of Representatives. Similar legislation in Senate (S. 2317).
- Ease registration requirements regarding litigation
 - ▣ Criminal proceedings
 - ▣ Fraud on the Copyright Office
- Revision regarding statutory damages for compilations & derivative works
- Conform remedies to other IP remedies
- Introduce exclusive right to export.
- Create Intellectual Property Enforcement Division in Dept. of Justice and beef up IP enforcement resources.
- Create U.S. Intellectual Property Enforcement Representative in White House

Amendment to § 410

- (c)(1) A certificate of registration satisfies the requirements of section 411 and section 412 regardless of any inaccurate information contained in the certificate, unless--
 - `(A) the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate; and
 - `(B) the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration.
- `(2) In any case in which inaccuracies described under paragraph (1) are alleged, the court shall request the Register of Copyrights to advise the court whether the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration.

Amendment to § 411(a)

§ 411. Registration and **civil** infringement actions

(a) Except for an action brought for a violation of the rights of the author under section 106A(a), and subject to the provisions of subsection (b), no **civil** action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title. ...

Amendment to § 504(c)(1)

(c) Statutory Damages. —

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$750 or more than \$30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

Amendment to § 504(c)(1)

(c) Statutory Damages. —

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$750 or more than \$30,000 as the court considers just. ~~For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.~~ **A copyright owner is entitled to recover statutory damages for each copyrighted work sued upon that is found to be infringed. The court may make either one or multiple awards of statutory damages with respect to infringement of a compilation, or of works that were lawfully included in a compilation, or a derivative work and any preexisting works upon which it is based. In making a decision on the awarding of such damages, the court may consider any facts it finds relevant relating to the infringed works and the infringing conduct, including whether the infringed works are distinct works having independent economic value.**